

## Chapter 4.

### Enforcement Procedures: Complaints and Citations

Complaints against contractors may be filed with the CSLB by homeowners, other contractors, subcontractors, material suppliers or employees. Public agencies such as the CSLB may also file complaints.

Most complaints made against contractors involve poor workmanship, abandonment of a project, failure to pay subcontractors, suppliers, or employees, building code violations, lack of reasonable diligence in executing a construction project, use of false, misleading, or deceptive advertising, and violations of the Home Improvement and Swimming Pool Acts.

#### Complaints Against Licensed Contractors

The CSLB Intake and Mediation Center nearest the location of the alleged violation receives and processes the complaint. A consumer services representative (CSR) contacts both the complainant and the contractor for information, including copies of the contract and verification of payments.

The CSR will attempt to mediate the complaint. If mediation is unsuccessful, the complaint may either be referred to arbitration or assigned to an enforcement representative (ER) for investigation.

The CSLB's arbitration program allows parties to a complaint who qualify under Section 7085 of the Business and Professions Code to participate in a binding arbitration process administered by a professional arbitration forum.

If the complaint is referred to an ER, he or she will investigate in order to determine if there have been any violations of the Contractors License Law or the Board Rules and Regulations. The ER will review documents and interview the contractor, the complainant, and other parties who might supply relevant information.

Once it has been determined that there are probable violations which, if proven, would present a risk of harm to the public, and for which suspension or revocation of the contractor's license or criminal prosecution would be appropriate, the date, nature and status of the complaint will be disclosed to the public upon request. This disclosure will be accompanied by a disclaimer stating that the complaint is only an allegation at this time.

#### What happens if a violation is established?

If a violation is established but is an isolated or minor one, the CSLB may send the licensee a warning letter. The warning letter informs the licensee that the CSLB is aware of the violation and that a future occurrence of the same violation may result in more stringent actions by the board.

If, on the other hand, a more critical violation is established, the Registrar of Contractors may issue a citation, which can include an order to correct a project, make restitution to an injured party, and/or pay a civil penalty of up to \$15,000.

If the licensee complies with the orders of the citation, the board takes no further action. If the licensee contests all or any part of the citation, a hearing is set before an administrative law judge of the State of California, at which the licensee can argue against the orders in the citation. If the licensee prevails at this hearing, the board takes no further action. However, if the licensee does not prevail and does not comply with a final citation order, the license may be suspended, then revoked.

For serious violations of law, the Registrar will take administrative action by filing an accusation with the Attorney General stating the board's intent to suspend or revoke the license. The licensee is given an opportunity to defend himself or herself at a hearing before a state administrative law judge. The following procedures are used to decide a case:

- The licensee may choose to have a hearing before a state administrative law judge. The recommendation of the law judge is used by the Registrar in determining the appropriate action to take;
- The licensee and the Registrar may negotiate a settlement of the case. This settlement is known as a "stipulation"; or
- If the licensee fails to respond to the accusation, the case will be considered to be in default. The Registrar will decide on the appropriate action to take against the licensee.

The decision of the Registrar may include various remedies:

- **Revocation of the license.** The licensee's right to engage in contracting is taken away. The license shall not be reinstated or reissued for one to five years from the effective date of the decision.

None of the official personnel who are listed on the board's records for a revoked license and who have been found to have had knowledge of or participated in the acts or omissions constituting grounds for the revocation may apply for a license until the penalty period is over. The licensee must also show that he or she has complied with all provisions of the decision and settled any loss caused by the act or omission that resulted in the revocation of the license and file a disciplinary bond in the amount set by the Registrar;

- **Suspension of the license.** The licensee is not entitled to operate during the period of suspension. A disciplinary bond must be filed before the license will be reinstated or reissued;

- **Stay of suspension or revocation (probation).** The licensee must abide by certain terms and conditions to keep the suspension or revocation from going into effect. He or she must also file a disciplinary bond in order to remain in business during this period. Suspension or revocation of the license will result if any of the terms of the agreement are violated;
- **Recovery of investigation and enforcement costs.** The licensee, in order to maintain good and clear standing or as a condition for renewal and reinstatement of his or her license, must pay the costs as ordered or as stipulated; or
- **Dismissal of the matter with no penalties.** Matters that have been dismissed are not disclosed to the public.
- **Injunction against unlawful activity.** Upon establishing that a blatant violation of the law has occurred, the CSLB may go to court to request an injunction which would immediately stop the unlawful activity;
- **Criminal Charges.** Upon establishing that a blatant violation of the law has occurred, the CSLB may refer the complaint to the local office of the District Attorney for a possible criminal filing.

Citations will be disclosed to the public from date of issuance and for five years from the date of compliance. Accusations that result in suspension or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation. All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

### Complaints Against Unlicensed Contractors

In California it is a misdemeanor to engage in the business or act in the capacity of a contractor without a contractor's license unless the contractor meets the criteria for exemption specified in Sections 7040 through 7054.5 of the Business and Professions Code.

When a complaint is filed against an unlicensed contractor, the CSLB will verify that the accused individual or firm contracted without a contractor's license and will, with sufficient evidence, determine the amount of financial injury involved.

### How does the CSLB process complaints against unlicensed contractors?

When the board receives a complaint against an unlicensed contractor, it may issue a citation or file a criminal action with the local office of the district attorney. In

some cases, it may initiate injunction proceedings against the nonlicensee through the office of the Attorney General or the District Attorney.

**Citation.** The Registrar may issue a citation to an unlicensed contractor when there is probable cause to believe that the person is acting in the capacity or engaging in the business of contracting without a license in good standing. The citation includes an **order of abatement** to cease and desist and a **civil penalty** of up to \$15,000. Unless the board receives a written appeal within fifteen working days after the citation is served, the citation becomes a final order of the Registrar. The civil penalty is paid to the CSLB.

If the citation is appealed, the appeal is heard before an administrative law judge. He or she submits a decision to either uphold, modify or dismiss the citation. The decision is sent to the Registrar for adoption.

If the cited unlicensed contractor continues to contract without a license, the Registrar may refer the case to the local District Attorney for criminal action.

**Criminal Action.** The CSLB brings criminal charges, and the respondent appears in local court, which renders a final decision on the case. The court may order a fine, probation, restitution, a jail sentence, or all of these.

**Injunction.** The Registrar may apply for an injunction with the superior court of either the county in which an alleged practice or transaction took place or the county in which such person maintains a business or residence. An injunction restrains an unlicensed person from acting in the capacity or engaging in the business of contracting without a license in good standing.

### How does the CSLB process complaints against unregistered salespersons?

The same citation process used for complaints against unlicensed contractors is used for complaints against unregistered home improvement salespersons. Of course, disciplinary action can also be taken against the licensed contractor who employs the unregistered salesperson.

### Statewide Investigative Fraud Team

In addition to the complaint process, the CSLB has established a statewide investigative fraud team that focuses on the underground economy and the unlicensed contractor who prospers at the expense of consumers and legitimate businesses. The unit has the authority to visit any job site without cause or complaint, and ask contractors to produce proof of licensure in good standing, citing those who are not properly licensed.